EXHIBIT H

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:)
)
SECURITIES INVESTOR)
PROTECTION CORPORATION,)
)
Plaintiff-Applicant,)
)
vs.) 08-01789 (SMB)
)
BERNARD L. MADOFF)
INVESTMENT SECURITIES, LLC,)
)
Defendant.)
)
)
In re:)
)
BERNARD L. MADOFF,)
)
Debtor.)
)

Videotaped Deposition of BERNARD L. MADOFF, VOLUME I, taken on behalf of the Customers, before K. Denise Neal, Registered Professional Reporter and Notary Public, at the Federal Correctional Institution, 3000 Old Highway 75, Butner, North Carolina, on the 26th day of April, 2017, commencing at 9:07 a.m.

* * * * *

APPEARANCES OF COUNSEL:

On Behalf of the Customers:

HELEN DAVIS CHAITMAN, Esq.
Chaitman, LLP
465 Park Avenue
New York, New York 10022
(908) 303-4568
hchaitman@chaitmanllp.com

On Behalf of the Trustee:

DAVID J. SHEEHAN, Esq.
AMANDA E. FEIN, Esq.
Baker Hostetler
45 Rockefeller Plaza
New York, New York 10111-0100
(212) 589-4621
afein@bakerlaw.com

On Behalf of the Deponent:

PETER A. GOLDMAN, Esq.
12 Fairlawn Parkway
Rye Brook, New York 10573
(914) 935-6857
pagoldman@gmail.com

APPEARANCES OF COUNSEL:

Videographer:

Ken Morrison, CLVS

* * * * *

CONTENTS

* * * * *

INDEX OF EXHIBITS

INDEX OF EXHIBITS (Continued)

* * * * *

Q. (By Ms. Chaitman) Now, to your knowledge has the Trustee settled with each of these four families?

A. I believe so.

Q. Okay. You testified the last time you were deposed by me that the fraud did not begin until you began doing the split strike conversion strategy in 1992?

A. Correct.

Q. Now, was it, as Judge Bernstein used the expression, a light switch? When you started doing a split strike, did you stop buying any securities for the split strike customers?

A. No. I had started -- I had started buying -- doing the strategy for probably through 1993; but as more money came in, that's when my problem began because I couldn't put it all to work in the strategy. And I had committed that I would keep all the money working.

Q. Okay. I just want to say one thing. I have seen statements as early as July 1991 which seem to be in split strike. Are you saying that it wasn't -- I'd like you to give me your best recollection of when you stopped buying securities for the split strike customers.

A. Sometime post-'92. As I started, you know, I was still buying it in '92 and also through most of '93. After that, that's when I stopped buying securities for split strike.
Q. Okay. Now, you continued to have some customers who were in convertible arbitrage?
A. Correct.
Q. Did you continue so long as people were in convertible arbitrage, did you actually buy those securities?
A. Yes.
Q. Okay. So it was only in the split strike that you stopped buying the securities?
A. Correct.
Q. Okay. Do you derive any kind of benefit from your testimony as to when the fraud started?
A. No.
Q. Does it benefit anyone in your family?
A. No.
Q. If the Trustee claims you're lying as to when the fraud started, is there any conceivable benefit that you enjoy by virtue of that testimony?
A. No.
Q. Does this testimony benefit any of your family members?

Q. Okay. So you took the money --
A. Which is part of the strategy as well.
Q. Right. So you basically took the money that went into the 703 account?
A. Correct.
Q. Which was the investment advisory customers' money?
A. Correct.
Q. And you purchased Treasury bills with that?
A. Correct.
Q. And in the early '90s the Treasury bills were bearing an interest rate of about six percent; isn't that true?
A. No. They probably were -- you know, they were short-term T bills, so they were probably, you know, closer to three to four percent.
Q. Okay. And that three to four percent was money that was earned by the customers --
A. Correct.
Q. -- whose money you were using?
A. Correct.
Q. And, in fact, the statements reflected the ownership of those Treasury securities?
A. Correct. And they -- well, they also, you know, reflected the ownership of the securities that

I wasn't buying.
Q. Right. Now, in late 1993 or early 1994 was your business, you were operating at that point as a sole proprietorship; is that right?
A. Yes.
Q. Was your business insolvent?
A. No.
Q. At what point in time did you become insolvent? And when I say you, I mean your sole proprietorship or the limited liability company.
A. I would say probably in the early 2000s, maybe somewhere between let's say '98 and 2002.
Q. Okay. And what --
MR. SHEEHAN: Can I just -- before you get an answer, two things. One is I don't know what insolvency means.
MS. CHAITMAN: Oh, okay.
MR. SHEEHAN: I'm going to ask to define that.
MS. CHAITMAN: Okay.
MR. SHEEHAN: And I'm not going to interrupt you again because I'm just going to have a continuing objection to leading questions, which is you're testifying more than he is, but I don't care about that. Just objecting. All right.

Q. For all of the employees at first the sole proprietorship?
A. Right, right.
Q. And then all of the employees at the LLC?
A. Yes. It never changed, right.
Q. Okay. And is it fair to say that at times money went from the 703 account to the Bank of New York account?
A. Yes. There were some instances that -- that I used that, but the issue is because all of these clients had margin accounts because they were short securities, whether it be convertible securities or whether it be the split strike trades, their -- the assets of the client is fungible with the firm because the long positions, whether it be Treasury bonds or whatever, is the collateral for the exposure on the short side of the firm.
So there were sometimes where relatively small amounts of money, I think, in the late '90s went from the 703 account into the Bank of New York account to cover -- what was not, I don't think, understood in the Dubinsky report among a lot of other things was that customers have short positions. They're mark to market from the clearing corporation every day and short position being the

difference in the market. As the stock market goes up, the short position goes up. The customer gets a call which is called a margin call.

So typically the money would come from the customer account to meet those margin calls. So we had -- we had margin calls that we had to make to the clearing corporation, which all that which was done through the Bank of New York account.

So by taking the money from the client account, putting it into the Bank of New York account, that allowed us to meet the margin calls of the clearing corporation. That is typical of the industry.

Q. Okay. Now, I want to ask you something else since you've mentioned the margin. If you -- if someone had a margin loan and you bought stock for them --

A. Right.

Q. -- would that stock be segregated in a clearing or custody account for that customer?

A. No.

Q. Why is that?

A. Because margin, the whole concept of a margin account is the firm is allowed to use those securities to borrow money to cover, you know, what

buying treasuries when we start the split strike conversions. So that would have been, you know, in the '90s.

Q. Okay. And to the best of your recollection at any given time how much investment advisory customers' money was held in U.S. treasuries?

A. Well, I would say basically the maximum that we had was between five firms we had about two-and-a-half billion dollars between Morgan Stanley, Lehman Brothers, Bear Stearns and Fidelity. Was that five firms? Four firms. And JP Morgan.

Q. Okay.

A. So I would say probably the maximum was probably about $6 billion held in treasuries.

Q. Okay, okay. Did it fluctuate or did you instruct your staff to maintain that amount?

A. No. It pretty much fluctuated depending upon the monies that came in and the monies that -- monies that came out.

Q. What percentage of the investment advisory customers' money was put in Treasury securities, if you can estimate that?

A. Well, I mean, the most we had -- I mean, the customer statements depending, you know, at the end was 60 some odd billion dollars.

Q. Not what the statements showed, but what you actually did.
A. What we actually did?
Q. Yeah. How --
A. I don't understand your question.
Q. Let me step back a minute. Were the people on the 17th, were any of the people on the 17th floor authorized to buy Treasury securities?
A. Yes.
Q. Who was authorized to buy Treasury securities?
A. Frank DiPascali, Eric Lipkin and a fellow by the name of Robert Romer.
Q. And they were -- what money were they authorized to use to buy the Treasury securities?
A. Whatever -- they followed the instructions of basically Frank DiPascali, who was the manager of that department. And the money, the money to buy the securities always came from customer money except for a small amount of treasuries or financial instruments that came from the operating operations of the market making proprietary trading side.
Q. Okay. So the money came from the 703 account, is that what you're saying, except for the --

A. For the most part, yes.
Q. Except for the money that came from the BNY account?
A. Right.
Q. Okay. Now, did you ever have a lock-in period like hedge funds would have which would prevent a customer from immediately demanding a redemption on their money?
A. No.
Q. Was there any period of time from the end of 1993 to 2008 when you were unable to honor a customer redemption?
A. No.
Q. Was there anytime between 1993 and 2008 when you felt that you couldn't redeem a customer's account unless you brought in new investment advisory customers?
A. No. Well, I would say during -- in 2008 probably that half the market was -- was collapsing. There would have been -- had customers requested money, I wouldn't have been able to do it, but no one had ever requested it.
Q. Okay. So, well, you did have significant redemptions in 2008?
A. Yes, at the very end in December.

Q. Okay. And prior to December 2008 --
A. But there was always -- there was -- you know, I never got an official request for redemption that I didn't have money to cover it to my recollection other than maybe the last week in December.
Q. Okay.
A. The last, you know, week that I was in business.
Q. Okay. So in the entire period when you were not buying the split strike securities starting say late 1993 or early 1994, had you ever received a redemption request where you thought oh, my God, I've got to bring in a new customer to have the money to pay this?
A. No.
Q. Did you actively solicit new investment advisory customers?
A. No.
Q. Why not?
A. Because the firm was in a position that we were always turning away investors. We never -- never solicited, you know, new monies coming in. As a matter of fact, we tried to return monies at times but met resistance with clients.

Whether or not we executed the transaction or not, they had opened up, you know, accounts, what would be deemed as a margin account, and that automatically allows you to commingle the securities.

Q. Okay. So you did have -- you did have physical possession of the securities with the margin accounts?

A. When we were buying them, yes.

Q. Okay. Now, you referenced the change from physical securities to electronic securities. Can you pinpoint when that occurred?

A. I don't remember any longer. I would say sometime during the '90s.

Q. Would it help if I told you that the Securities Investor Protection Act was enacted in 1970?

A. No.

Q. Okay. Now, when you were doing the convertible arbitrage, did you ever use a strategy called legging in?

A. Always.

Q. Okay. And can you explain what legging in means?

A. Legging in means that when you're doing a

strategy, whether it be for convertible securities or for the split strike, you go in and you don't buy everything typically in one day.

You start -- when the firm makes a decision to effect a strategy, whether it be convertible bonds or whether it be a basket strategy and a split strike where you're buying, you know, a portfolio of securities, the skill of the strategy is to being able to judge the market.

So you -- if when you're going out and buying securities, you would start buying it let's say on a Monday, Tuesday, Wednesday, Thursday. Typically you would buy it over a four-day period was basically what our practice is. And you would have different prices during the four-day period.

And all of our strategies use what's defined as an average price transaction, which means we would then take the average price that we bought stock during that four-day period and that would be the -- you know, we'd figure what the average was that we paid and then we would -- we would send the customer a confirmation on the last day.

So let's say on a Thursday, we started on Monday. And if you start -- to make a simple example, let's say you did it over four days and you

paid -- you started buying stock at 50 and you wound up buying it at, you know, up to 51 and you had an average of 50-and-a-half, you would -- you would place five-and-a-half.

Q. Was that unique to you or was this something --

A. No. That's typical for any firm that is investing in a strategy and treating -- you know, that's treatable to customers the same in a particular strategy.

Q. Now, you testified last time that Mr. Dubinsky apparently lacked an understanding of that strategy?

A. Well, he -- he must have. He must have not understood the strategy because his report failed to -- failed to state that. So, for example, where Dubinsky, when he was trying to analyze the prices that a customer paid in relationship to the market, he would look on whatever the trade date was on the confirmation.

And the trade date on the confirmation, for example, would be -- an example I use would be the trade date would be Thursday's trade date. If the stock had traded at 51 and on that day if that was the higher, the lower the stock and the average was

50-and-a-half for the customer, there would be a difference. So it wouldn't match up. Now, the customer, the customer confirmation always stated -- there was a legend on it that said that the transactions effected for the customer was an average price transaction.

So right away that would -- that would illustrate that he wasn't accounting for the -- for the fact that the transaction was an average price transaction.

The same thing would happen when you -- the same error he made when he accounted for volume because he would just look at the volume that occurred on the one day, on the date of the trade date, as opposed to the volume that happened on the four days. So, obviously, he's looking at the volume on one day when you should be looking at the volume on four days.

Q. Now, Mr. Madoff, Mr. Dubinsky testified at the Bonventry trial that the Trustee paid him over $30 million to do his report. Did he at any time ever seek to talk to you?

A. No.

Q. To your knowledge did he or anyone on his behalf ever seek to meet with you to discuss how you

operated the business?
A. No.
Q. Did anyone working with the Trustee ever ask you any questions about how your convertible arbitrage trades were done?
A. No.
Q. Did anyone working with the Trustee ever question you about any activity of the firm that predated 1992?
A. No.
Q. Now, you mentioned with respect to the purchase of Treasury securities with the investment advisory customers' money that the purchases were done through Bear Stearns, Morgan Stanley, Fidelity, Lehman Brothers and JPMorgan Chase?
A. Right.
Q. Were there also purchases done directly by Frank DiPascali, Eric Lipkin and Robert Romer?
A. Correct.
MS. CHAITMAN: I'm going to mark as Exhibit 15, which is the next number from our last deposition, a compilation of trade tickets. I have two if you each want one.
(Customers Exhibit 15 was marked for identification.)

A. Yes.
Q. And it would have been held for the benefit of the investment advisory customers?
A. It would have been -- it would have been held at the firm for the benefit of the firm. We didn't segregate, you know, these securities.
Q. But if the money that was used to purchase this --
A. Uh-huh.
Q. -- came from the 703 account, would this show up, for example, on your focus reports?
A. This particular -- I don't know. I mean, the only trades that -- if it went through the Bloomberg terminal, typically that would show up -- I don't know if it would show up on the focus report.
It depends upon whether the trade was bought for -- there were some trades that were bought -- well, not if it was bought by the people that you mentioned. They only have the authority to execute trades for client accounts, not for the firm's account.
Q. Okay. So I'm confused.
A. These securities would be held either at -- typically it would be held at DTC or the Bank of New

York.
Q. Okay.
A. I mean, I can't tell from that. It depends upon where the trade would settle. Any of these Bloomberg trades that went through the Bloomberg terminal, it would actually be a money settlement for the transaction. Otherwise, you couldn't -- you couldn't do it.
Q. Okay. And that would be done through some ins --
A. It would be done through some -- typically through Bank of New York.
Q. Okay.
A. It could also have been done through JP Morgan as well in delivery.
Q. Okay, okay. You didn't have the ability yourself to clear Treasury security purchases?
A. Correct. We didn't have the authority to execute and clear.
Q. Treasury security purchases?
A. Right.
MS. CHAITMAN: Okay.
MR. SHEEHAN: Helen, just for the record, this seems to be -- you did call it a compilation, but since there were different productions, one is

Q. The feeder funds?
A. Those are the hedge funds.
Q. Those are the hedge funds. Okay. So were you buying the Treasury securities then to protect the private customers as opposed to the hedge funds?
A. I didn't look at it, you know. I didn't isolate it one over the other because I knew I was basically obligated for -- you know, for all of it.
Q. Okay. Now, you said that you purchased Treasury securities with the 703 account money through the five institutions that you named?
A. Right.
Q. Bear Stearns, Fidelity, Lehman Brothers, JPMorgan Chase and Morgan Stanley --
A. Right.
Q. -- is that right?
A. Yes.
Q. Okay. It was only those five firms?
A. Yes.
Q. Okay. And did you maintain a consistent portfolio of Treasury securities at each of those institutions?
A. They were rarely sold unless they matured and then we repurchased, you know, different, you know, Treasury bills. Yes, I mean, for the most

part the monies in those accounts built and became, you know, more and more up to the maximum, which was, I think, $500 million pretty much in each account.

Q. So you maintained 500 million of Treasury securities at each of those five firms?

A. Pretty much, yes.

Q. Okay. And then in addition you had the portfolio that was purchased directly --

A. Correct.

Q. -- by the 17th floor people?

A. Right.

Q. Now, the market making and proprietary trading people were buying and selling securities; right?

A. Yes.

Q. And what kind of records were kept of the securities that were held by the firm as of say month end of each month? Was there a record kept of an inventory of securities that were owned by the firm as of the end of each month?

A. That the firm was long you're talking about?

Q. Yes.

A. Yeah. That was -- you know, you were

Q. I'd have to look at -- were there other places that you held securities? Would I have to look at, say, your account at Bear Stearns?
A. You would have to look at the banks if there were -- if there were bank loans.
Q. Because if you borrowed from a bank, you would have pledged the securities to the bank?
A. Right. Typically they would be held at DTC, but they would be in the bank's account at DTC. They would be journaled over to the bank. So you'd have to look at the DTC -- you'd have look at the -- you would have to get that from the bank themselves because DTC would not give them to you.
Q. What banks did you borrow money from where you pledged the securities to the banks?
A. It could be JP Morgan. It could be Bank of New York, you know, depending on what period; but if you were looking at 2008 or 2000s, it would be typically Bank of New York, M&T, it could be JP Morgan. I think that's -- those are the banks that we used at that time.
Q. And if it's earlier?
A. You'd have to look at any one of the -- you probably couldn't get them, you know, but it would be the banks that I mentioned to you.

C E R T I F I C A T E

NORTH CAROLINA:

GUILFORD COUNTY:

I hereby certify that the foregoing deposition was reported, as stated in the caption, and the questions and answers thereto were reduced to the written page under my direction; that the foregoing pages 1 through 209 represent a true and correct transcript of the evidence given. I further certify that I am not in any way financially interested in the result of said case.

I have no written contract to provide reporting services with any party to the case, any counsel in the case, or any reporter or reporting agency from whom a referral might have been made to cover this deposition. I will charge my usual and customary rates to all parties in the case.

This, the 10th day of May, 2017.

K. Denise Neal

K. Denise Neal, RPR
Registered Professional Reporter
Notary Public No. 200517500101